

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harry Feigen	Team: Squad #13	CCRB Case #: 201709949	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday 11/29/2017 3:05 PM	18 Mo. SOL 05-29-2019	EO SOL 05-29-2019	Location of Incident: East Tremont Avenue and Coddington Avenue		Precinct: 45
Date/Time CV Reported Thu, 11/30/2017 5:31 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 11/30/2017 5:31 AM		

Complainant/Victim	Type	Home Address
1. § 87(2)(b)		

Subject Officer(s)	Shield	TaxID	Command
1. POM Jimmie Moore	25780	925771	PSA 8
2. POM Michael Heinz	09897	953959	PSA 8

Officer(s)	Allegation	Investigator Recommendation
A . POM Michael Heinz	Discourtesy: At the intersection of East Tremont Avenue and Coddington Avenue in the Bronx, PO Michael Heinz spoke discourteously to § 87(2)(b)	A . § 87(2)(g)
B . POM Michael Heinz	Force: At the intersection of East Tremont Avenue and Coddington Avenue in the Bronx, PO Michael Heinz used physical force against § 87(2)(b)	B . § 87(2)(g)
C . POM Jimmie Moore	Force: At the intersection of East Tremont Avenue and Coddington Avenue in the Bronx, PO Jimmie Moore used pepper spray against § 87(2)(b)	C . § 87(2)(g)
D . POM Michael Heinz	Abuse of Authority: At the intersection of East Tremont Avenue and Coddington Avenue in the Bronx, PO Michael Heinz damaged § 87(2)(b) property.	D . § 87(2)(g)
E . POM Michael Heinz	Abuse of Authority: At the intersection of East Tremont Avenue and Coddington Avenue in the Bronx, PO Michael Heinz searched the vehicle in which § 87(2)(b) was an occupant.	E . § 87(2)(g)
F . POM Michael Heinz	Abuse of Authority: At the PSA 8 stationhouse, PO Michael Heinz searched the vehicle in which § 87(2)(b) was an occupant.	F . § 87(2)(g)
G . POM Michael Heinz	Abuse of Authority: At the PSA 8 stationhouse, PO Michael Heinz damaged § 87(2)(b) property.	G . § 87(2)(g)

## Case Summary

On November 30, 2017, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

On November 29, 2017, at approximately 3:05 p.m., PO Michael Heinz and PO Jimmie Moore of PSA 8 stopped § 87(2)(b) vehicle at the intersection of East Tremont Avenue and Coddington Avenue after observing § 87(2)(b) drive with excessive speed, drive in a bike lane, and cut in front of two other vehicles. The officers approached § 87(2)(b) vehicle and PO Heinz told § 87(2)(b) “Get the fuck out of the car” (**Allegation A: Discourtesy**, § 87(2)(g)). A physical struggle ensued in which PO Heinz tried to remove § 87(2)(b) from the vehicle, during which PO Heinz punched § 87(2)(b) in his face (**Allegation B: Force**, § 87(2)(g)). PO Moore then deployed pepper spray against § 87(2)(b) (**Allegation C: Force**, § 87(2)(g)). PO Heinz tore § 87(2)(b) pants while trying to pull him out of the vehicle (**Allegation D: Abuse of Authority**, § 87(2)(g)). PO Heinz searched § 87(2)(b) vehicle at the scene of the arrest (**Allegation E: Abuse of Authority**, § 87(2)(g)) and searched it further at the PSA 8 stationhouse (**Allegation F: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) was arrested and charged with § 87(2)(b). When § 87(2)(b) vehicle was returned to him, a panel in the trunk was ripped off and damaged (**Allegation G: Abuse of Authority**, § 87(2)(g)).

## Findings and Recommendations

### **Allegation A: Discourtesy – At the intersection of East Tremont Avenue and Coddington Avenue in the Bronx, PO Michael Heinz spoke discourteously to § 87(2)(b)**

It is undisputed PO Heinz and PO Moore stopped § 87(2)(b) vehicle at the intersection of East Tremont Avenue and Coddington Avenue in the Bronx. PO Heinz and PO Moore approached § 87(2)(b) vehicle, and during the car stop PO Heinz told § 87(2)(b) to step out of his vehicle. Whether or not PO Heinz used profanity when he said this to § 87(2)(b) is in dispute, however.

§ 87(2)(b) alleged that PO Heinz told him to get out of the car several times, and that the final time PO Heinz said this, he stated, “Get out of the fucking car” (01 Board Review). PO Heinz and PO Moore both affirmed that PO Heinz ordered § 87(2)(b) to exit his car several times, but both denied that PO Heinz made the alleged statement. PO Heinz did not recall using any profanity towards § 87(2)(b) during this incident, and PO Moore denied that PO Heinz used any profanity (02 Board Review, 03 Board Review). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation B: Physical Force – At the intersection of East Tremont Avenue and Coddington Avenue in the Bronx, PO Michael Heinz used physical force against § 87(2)(b)**

§ 87(2)(b) stated that his vehicle smelled of marijuana during this incident, because he had smoked marijuana the day before this incident, and he was wearing the same jacket he had worn when he smoked the previous day. He also had a small marijuana cigarette sitting in a receptacle in plainview in between the two front seats in his vehicle. § 87(2)(b) denied that he was smoking the marijuana cigarette when the officers first approached his vehicle. When PO Heinz first approached his window, § 87(2)(b) told the officer that he had a small marijuana cigarette in his car. PO Heinz asked for § 87(2)(b) license, registration, and proof of insurance, and § 87(2)(b) responded that he was going to retrieve these items from his glove compartment. PO Moore approached the front passenger window of § 87(2)(b) vehicle at that time. § 87(2)(b) reached towards his glove compartment, and PO Heinz told him to get out of the car. § 87(2)(b) asked PO Heinz how they were going to identify him if he did not get his ID from the glove compartment, and PO Heinz again told § 87(2)(b) to exit the car. PO Heinz then reached through § 87(2)(b) open window and punched him in the right side of his face with a closed fist. § 87(2)(b) could not say how PO Heinz punched the right side of § 87(2)(b) face if he was standing on the left side of § 87(2)(b) but stated he may have been turning his face towards PO Heinz at that time. PO Heinz then grabbed § 87(2)(b) left shoulder and punched him again in the left side of his temple, and then punched him a third time in the right side of his temple. § 87(2)(b) denied that he was resisting PO Heinz or moving his body in any way at the time that PO Heinz punched him. § 87(2)(b) sustained swelling and bruising to the right side of his face from being punched by PO Heinz. § 87(2)(b) sent photographs of these injuries to the CCRB (04 Board Review).

PO Heinz stated that when he approached § 87(2)(b) vehicle, he first asked § 87(2)(b) to provide his license and registration. He smelled an odor of burning marijuana coming from § 87(2)(b) vehicle, and then observed that § 87(2)(b) was holding a lit marijuana cigarette. § 87(2)(b) said something to the officers admitting that he had marijuana in the car, but PO Heinz could not recall what this statement was. § 87(2)(b) put the marijuana cigarette in an ashtray, and then began reaching towards his glove compartment. PO Heinz believed § 87(2)(b) may have been reaching for a weapon in the glove compartment because § 87(2)(b) continued to reach towards that area despite being told not to by PO Heinz. PO Heinz did not have any other reason besides this to believe that § 87(2)(b) was armed, or that there was a weapon in the glove compartment. PO Heinz told § 87(2)(b) to exit the car, because he was going to place § 87(2)(b) under arrest at that time for possession of marijuana. § 87(2)(b) stopped reaching for the glove compartment, but told PO Heinz he was not getting out of the vehicle, and asked him, “But don’t you need my license?” § 87(2)(b) then reached for the glove compartment again, and PO Heinz told him to stop reaching for the glove compartment, and again told him to exit the vehicle. PO Heinz told § 87(2)(b) to exit

the vehicle approximately five times in total, and § 87(2)(b) repeatedly asked if the officer needed his license, and would then try to reach for the glove compartment. PO Heinz then opened § 87(2)(b) door and grabbed his left arm with both hands. § 87(2)(b) began to flail his arms and tried to push PO Heinz off of him. PO Heinz reached over § 87(2)(b) and tried to unbuckle his seatbelt, and § 87(2)(b) continued to flail his arms. § 87(2)(b) struck PO Heinz in his neck at this time with one of his hands, although PO Heinz did not believe that § 87(2)(b) was intending to strike him, but rather was just flailing generally. PO Heinz then punched § 87(2)(b) with a closed fist in the right side of his face at that time. PO Heinz observed an abrasion on the right side of § 87(2)(b) face after this incident, but he did not know how § 87(2)(b) sustained it. PO Heinz did not sustain any injuries.

PO Moore, who approached the passenger side of the vehicle, also stated that § 87(2)(b) was holding a lit marijuana cigarette when the officers first approached, and that there was a smell of burning marijuana coming from the vehicle. § 87(2)(b) told the officers that he was smoking a “blunt” before either officer said anything to § 87(2)(b). PO Heinz then told § 87(2)(b) to step out of the vehicle. PO Moore did not know if PO Heinz had asked for § 87(2)(b) license and registration before asking him to exit the car. § 87(2)(b) leaned backwards in his seat, but did not exit the car, and did not make any other movements inside of the car. PO Moore did not recall if § 87(2)(b) said anything to the officers at this time. PO Heinz told § 87(2)(b) to exit the car approximately three to four times, and § 87(2)(b) continued to sit in the car, without making any movements or saying anything. PO Heinz then opened § 87(2)(b) door and tried to grab § 87(2)(b) arms. § 87(2)(b) leaned away from PO Heinz and tried to push his hands off of him. PO Moore initially stated that PO Heinz struck § 87(2)(b) in the face with his hand after approximately five to ten seconds of trying to grab § 87(2)(b) but later stated that he did not actually see PO Heinz strike § 87(2)(b) in his face, as PO Moore was walking around the vehicle to the driver side at that time. He believed that PO Heinz struck § 87(2)(b) in the face at this time, however, because § 87(2)(b) stated to him later that PO Heinz had done this. PO Moore denied that § 87(2)(b) resisted PO Heinz physically in any way other than leaning away from PO Heinz and pushing his hands away from him as PO Heinz tried to grab his arms. PO Moore did not know if PO Heinz struck § 87(2)(b) with his hand one time only or if he did this multiple times. PO Moore stated that § 87(2)(b) may have sustained an abrasion to his face from this incident, but he did not know what the cause of the abrasion was. PO Moore did not ever believe during this incident that § 87(2)(b) was armed.

§ 87(2)(b) arrest photograph shows an abrasion to the right side of his face, consistent with the injury shown in the photographs he provided to the CCRB (05 Board Review).

§ 87(2)(g)

§ 87(2)(g)

As per Patrol Guide Procedure 221-01, an officer's use of force must be objectively reasonable given the totality of the circumstances in which he uses the force. Factors an officer should consider when determining what level of force is reasonable include the nature and severity of a suspect's crime, actions taken by the suspect, the immediacy of the perceived threat or harm to the suspect or others, and whether the subject is actively resisting or trying to evade arrest by flight (06 Board Review).

In this incident, the officers were arresting § 87(2)(b) for § 87(2)(b). While § 87(2)(b) reached towards his glove compartment several times, he told PO Heinz that he was doing this to retrieve his driver's license, which PO Heinz had previously asked him for. § 87(2)(g)

**Allegation C: Force – At the intersection of East Tremont Avenue and Coddington Avenue in the Bronx, PO Jimmie Moore used pepper spray against § 87(2)(b)**

§ 87(2)(b) stated that while PO Heinz was punching him, PO Moore ran around to the driver side of the car. Immediately after PO Heinz punched § 87(2)(b) for the third time, PO Moore pepper sprayed § 87(2)(b) through his window. PO Moore did not say anything to § 87(2)(b) before deploying the pepper spray. § 87(2)(b) was not moving his body or resisting at the time that PO Moore pepper sprayed him.

PO Moore stated that he walked around § 87(2)(b) vehicle to the driver door after PO Heinz opened § 87(2)(b) door. When PO Moore reached § 87(2)(b) door, § 87(2)(b) was still seated in his vehicle, and PO Heinz was grabbing § 87(2)(b) PO Moore immediately deployed pepper spray at § 87(2)(b) face at that time. PO Moore did not take any actions at § 87(2)(b) door prior to deploying pepper spray at § 87(2)(b) PO Moore used pepper spray because he believed it would be an effective means to gain § 87(2)(b) compliance, but he denied having any reason to believe that a lesser use of force such as grabbing § 87(2)(b) would not have been an effective means of gaining control of him. PO Moore denied that he issued any warnings or commands prior to deploying his pepper spray at § 87(2)(b) He denied that § 87(2)(b) had resisted physically in any way prior to this besides § 87(2)(b) leaning away from PO Heinz and pushing PO Heinz's hands off of him when PO Heinz tried to grab § 87(2)(b)

PO Heinz stated that after he punched § 87(2)(b) in the face, § 87(2)(b) raised his arms above his head and PO Heinz was able to unbuckle § 87(2)(b) seatbelt. § 87(2)(b) then curled his body up and began to flail his arms and legs. PO Moore grabbed § 87(2)(b) left arm and PO Heinz grabbed § 87(2)(b) pants and both officers unsuccessfully tried to pull him out of the car. PO Heinz then took a step back and PO Moore deployed pepper spray at § 87(2)(b) Prior to doing this, PO Moore told § 87(2)(b) "Get back or I'll spray you."

§ 87(2)(g)

Patrol Guide Procedure 221-07 states that pepper spray can be used as an alternative to physical force to gain control of a person who is exhibiting active aggression, resisting arrest, or poses a threat of injuring himself, an officer, or other person. When feasible, an officer should advise a person that he will use pepper spray prior to using it, in an effort to gain voluntary compliance from the person (07 Board Review). As per Patrol Guide Procedure 221-01, any use of force by an officer, including pepper spray, must be objectively reasonable given the totality of the circumstances in which he uses it.

§ 87(2)(g)

§ 87(2)(g)

**Allegation D: Abuse of Authority – At the intersection of East Tremont Avenue and Coddington Avenue in the Bronx, PO Michael Heinz damaged § 87(2)(b) property.**

It is undisputed that PO Heinz ripped § 87(2)(b) pants when he tried to pull § 87(2)(b) out of his car. It is also undisputed that PO Heinz had probable cause to arrest § 87(2)(b) at that time for possession of marijuana, and that § 87(2)(b) had refused to exit his vehicle after being told to do so by PO Heinz multiple times. As discussed above, the investigation determined by a preponderance of the evidence that § 87(2)(b) leaned away from PO Heinz and tried to push the officer's hands off of him when PO Heinz first tried to pull § 87(2)(b) out of his car.

§ 87(2)(g)

**Allegation E: Abuse of Authority – At the intersection of East Tremont Avenue and Coddington Avenue in the Bronx, PO Michael Heinz searched the vehicle in which § 87(2)(b) was an occupant.**

**Allegation F: Abuse of Authority – At the PSA 8 stationhouse, PO Michael Heinz searched the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that PO Heinz searched § 87(2)(b) vehicle at the scene of his arrest after § 87(2)(b) was handcuffed and placed in the officers' vehicle, and that he conducted an inventory search of the vehicle at the PSA 8 stationhouse. It is also undisputed that § 87(2)(b) vehicle smelled of marijuana during this car stop, that the officers observed a marijuana cigarette in plainview inside of § 87(2)(b) vehicle as they first approached, and that § 87(2)(b) told the officers that he had marijuana in his car. Lastly, it is undisputed that the officers took § 87(2)(b) vehicle into NYPD custody, as he was placed under arrest, and no other civilian was present to take possession of the vehicle.

An officer may conduct a warrantless search of an automobile when he has probable cause to believe there is contraband inside of it. The odor of marijuana emanating from a vehicle grants an officer probable cause to search the vehicle. People v. Gaines, 57 A.D.3d 1120 (2008) (08 Board Review). Per Patrol Guide Procedure 218-13, when the NYPD takes a vehicle into custody, an officer must conduct an inventory search of the vehicle (09 Board Review).

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation G: Abuse of Authority – At the PSA 8 stationhouse, PO Michael Heinz damaged § 87(2)(b) property.**

§ 87(2)(b) [REDACTED] alleged that when he received his vehicle back from NYPD custody after this incident, a panel in the trunk of his vehicle had been ripped off and damaged. § 87(2)(b) [REDACTED] was asked to send photographs to the CCRB of this damage, but he did not ever do this.

PO Heinz and PO Moore denied searching the trunk of § 87(2)(b) [REDACTED] vehicle at the scene of the arrest. PO Heinz conducted an inventory search of § 87(2)(b) [REDACTED] vehicle at the PSA 8 stationhouse, and searched the trunk of the vehicle at that time. PO Heinz denied removing any panels or causing any damage to the trunk during the course of his search. He denied observing any damage of this kind to the vehicle, but stated the trunk was messy so he could not say for certain whether or not there was damage to the trunk while he searched it. Both officers denied that PO Moore searched the vehicle at the scene of the arrest or at the stationhouse.

§ 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Civilian and Officer CCRB Histories**

- This is § 87(2)(b) [REDACTED] first CCRB complaint.
- PO Heinz had been a member of service for five years. There are no substantiated allegations on his record. There are three previous physical force allegations against him across three cases. One allegation has been closed as “exonerated,” and two have been closed as “complainant uncooperative.”



- PO Moore has been a member of service for 17 years. In case 201407548, an interference with recording was substantiated against him. In case 201602039, a pepper spray allegation and a discourtesy allegation were substantiated against him.

### **Mediation, Civil, and Criminal Histories**

- This case was not suitable for mediation, due to § 87(2)(b) arrest.
- A notice of claim request was submitted to the NYC Comptroller's Office on January 9, 2018. It will be added to the case file upon its receipt (10 Board Review).
- § 87(2)(b) criminal case pertaining to this incident is still open. His next court date is § 87(2)(b) (11 Board Review).
- § 87(2)(b) (12 Board Review).

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Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_

Signature	Print Title & Name	Date
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Squad Leader: \_\_\_\_\_

Signature	Print Title & Name	Date
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Reviewer: \_\_\_\_\_

Signature	Print Title & Name	Date
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